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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,427	02/12/2004	Thomas Poschmann	510.1096	4328
23280	7590	05/30/2008		
Davidson, Davidson & Kappel, LLC 485 7th Avenue 14th Floor New York, NY 10018			EXAMINER WALKER, KEITH D	
			ART UNIT	PAPER NUMBER
			1795	
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			05/30/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/777,427

Applicant(s)

POSCHMANN ET AL.

Examiner

KEITH WALKER

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 3-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Remarks

Claims 1-10 are pending examination with claims 3-10 withdrawn as a non-elected invention. Claims 1 & 2 are pending examination as discussed below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

1. Claims 1 & 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The amendment to claim 1 in line 9, "the anode side and the cathode side of the diaphragm module being separated" is indefinite because the diaphragm module being recited refers back to the diaphragm module in the preamble, which is used to separate the hydrogen from the gas mixture, not the diaphragm that is equivalent to the electrolyte in the fuel cell. It is unclear what features are being claimed and what components are being controlled by what conditions.

Claims depending from claims rejected under 35 USC 112 are also rejected for the same.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,063,515 (Epp).

Epp teaches a method of controlling a fuel cell system where hydrogen-containing gas is produced by a reformer. The hydrogen-containing gas is then sent to a diaphragm module that selective separates out the hydrogen, which is used for the fuel cell. The reformer gas is kept at a higher pressure than the separated hydrogen gas (Abstract; Figs. 1 & 3; 2:30-40, 3:45-67, 7:50-8:5). If the hydrogen separation diaphragm breaks, a pressure differential between the anode and the cathode side of the fuel cell is held below a predefined value as determined by the difference between the operating pressure of the reformer and the operating pressure of the cathode inlet. In this case, the pressure would be held below a pressure difference of 300 psi (400 psi for the reformer minus 100 psi for the operating pressure of the fuel cell).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,063,515 (Epp).

The teachings of Epp as discussed above are incorporated herein. Epp is silent to keeping the pressure differential below 500 mbar.

The operating pressure of the oxidant and the fuel supplied to the fuel cell is between 40 and 80 psi (10:30-55). A pressure sensor and purge valve is located in the anode fuel supply loop and the pressure sensor is used to maintain the hydrogen pressure between 40 and 80 psi. It is well known in the art to keep the pressure difference between the anode side and cathode side below tolerance levels dependent upon the electrolytic membrane used for the fuel cell. If the pressure difference across the membrane becomes greater than the tolerance level the membrane could develop holes or tears and either decrease the performance of the fuel cell or possibly impede the operation of the fuel cell. Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to utilize the pressure sensor and vent of Epp to keep the pressure differential between the anode and the cathode under 500 mbar in order to keep the fuel cell operating efficiently.

Response to Arguments

Applicant's arguments filed 2/11/08 have been fully considered but they are not persuasive.

Applicant argues Epp doesn't teach holding the pressure difference below a predefined value when the diaphragm breaks. As discussed in the above rejection, the difference in pressure is held below a predefined value, which corresponds to the difference in operating pressure of the reformer and the fuel cell or more pointedly the cathode.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KEITH WALKER** whose telephone number is (571)272-3458. The examiner can normally be reached on Mon. - Fri. 8am - 5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

K. Walker

/Mark Ruthkosky/
Primary Examiner, Art Unit 1795